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PUBLIC BANK BHD v. NATIONAL FEEDLOT CORPORATION SDN BHD & ORS AND ANOTHER APPEAL

FEDERAL COURT, PUTRAJAYA
HASNAH MOHAMMED HASHIM CJ (MALAYA)
ABDUL RAHMAN SEBLI CJ (SABAH & SARAWAK)
B ABU BAKAR JAIS FCJ
[CIVIL APPEAL NOS: 02(f)-14-05-2024(W)
& 02(f)-15-05-2024 (W)]
28 AUGUST 2025

C

Abstract – *Where evidence is tendered but not challenged or contradicted by the opposing party, the court is entitled – and indeed obliged – to act on that unchallenged evidence. Documentary evidence which is neither challenged nor debunked remains good, credible and should be relied upon. In this case, an abundance of financial evidence*
D *adduced by one party such as comprehensive financial reports and audited accounts, supported by testimony from expert witnesses, remain uncontroverted when the opposing party fails to adduce any evidence to rebut the documents.*

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BANKING: *Breach – Duties – Fiduciary duties – Banking information – Wrongful and unauthorised disclosure of confidential banking information – Failure in protecting client's personal and financial information – Whether bank found liable – Claim for damages – Whether abundance of financial evidence adduced supported by expert witness – Absence of rebuttal or documentary evidence*
F *– Whether financial reports and audited accounts remain uncontroverted – Whether evidence adduced sufficient to prove loss and damages – Whether equitable, exemplary and aggravated damages awarded*

CIVIL PROCEDURE: *Damages – Claim for – Breach of fiduciary duty – Banking information – Wrongful and unauthorised disclosure of confidential banking information – Failure in protecting client's personal and financial information –*
G *Whether bank found liable – Claim for damages – Whether abundance of financial evidence adduced supported by expert witness – Absence of rebuttal or documentary evidence – Whether financial reports and audited accounts remain uncontroverted – Whether evidence adduced sufficient to prove loss and damages – Whether*
H *equitable, exemplary and aggravated damages awarded*

There were two appeals herein: (i) Appeal No: 02(f)-14-05-2024(W), an appeal by the appellant ('Public Bank') against the decision of the Court of Appeal allowing the respondents' appeal on liability; and (ii) Appeal No. 02(f)-15-05-2024(W), was an appeal by the respondents against the Court of
I Appeal's decision awarding them only nominal damages of RM10,000 despite having proved liability against Public Bank. The respondents' claims

were for losses and damages arising out of the wrongful and unauthorised disclosure of the respondents' confidential banking information ('confidential information') in breach of Public Bank's statutory duty in contravention of Banking and Financial Institutions Act 1989 ('BAFIA'), in breach of Personal Data Protection Act 2010 ('PDPA'), in breach of contractual duty between bank and customers and/or fiduciary duties of confidentiality as a financial institution for their failure in protecting its clients' personal and financial information. The respondents' claim for general damages was based on the alleged loss of profitability resulting from the conduct of Public Bank, that was, the disclosure of confidential documents released. At the trial before the High Court, the respondents had, through SP1 and SP3, adduced and explained the financial charts to demonstrate the trend analysis of how NFCorp and its group of companies were financially impacted by the disclosure. The High Court, however, rejected the evidence of SP3 based on his qualifications, as he did not have any qualification in financial analysis. The High Court concluded that even if the respondents succeeded in establishing liability, the respondents failed to adduce any evidence to show that they had suffered damages or loss as a result of the statement made. The Court of Appeal reversed the findings of liability made by the High Court and found Public Bank liable. The Court of Appeal, however, did not assess and re-evaluate the High Court's finding on damages. The respondents sought the following reliefs: (i) general damages of RM60,000,000, calculated based on the net income suffered by the respondents as at year 2013; (ii) exemplary damages of RM250,000,000, as a result of the disclosure of confidential information which resulted in the smearing of the respondents' reputation; and (iii) aggravated damages of RM250,000,000, for the damages suffered by the respondents as they had lost the opportunity to generate future income in the business of all of the companies and as a result could not continue with their business.

Held (allowing respondents' appeal; dismissing appellant's appeal):

(1) It is a well-established principle of law that where evidence is tendered but not challenged or contradicted by the opposing party, the court is entitled – and indeed obliged – to act on that unchallenged evidence. Documentary evidence which is neither challenged nor debunked remains good, credible and should be relied upon. There was an abundance of financial evidence adduced by the respondents, such as comprehensive financial reports and audited accounts, supported by testimony from its expert witness, PW3. Public Bank, however, did not adduce any evidence to rebut these documents – neither through expert testimony, bank records, nor other documentary materials. Instead, their only course of attack concerned PW3's qualifications or credibility. Thus, in the absence of any expert rebuttal or documentary evidence, the financial reports and audited accounts remain

uncontroverted. Public Bank's challenge on PW3's standing could not substitute for meaningful cross-examination or contrary evidence, and did not undermine the reliability of the underlying financial documents themselves. (paras 26 & 27)

(2) The Court of Appeal had erred in concluding that the respondents had adduced insufficient evidence in support of their claim for damages. On the contrary, the respondents had submitted financial reports and audited accounts through their expert witness, PW3, who was the respondents' financial consultant. Public Bank had challenged PW3's qualifications; however, PW3 holds a degree in finance as well as a Master of Business Administration (MBA), and possessed over 30 years of experience in the field of finance. PW3 was duly qualified to give expert evidence on the financial impact suffered by the respondents. Public Bank, on the other hand, failed to produce any expert witness to challenge or rebut the evidence of PW3, thereby leaving the testimony of PW3 uncontradicted. (para 20)

(3) After thoroughly examining the detailed financial reports and audited accounts which was adduced as evidence and not challenged by Public Bank, the respondents had indeed suffered loss and damages. Thus, this court awarded the following: (i) equitable damages of RM30 million; (ii) exemplary damages of RM30 million; and (iii) aggravated damages of RM30 million. There were merits raised in the issues raised by the respondent. (para 28)

Bahasa Melayu *Headnotes*

Terdapat dua rayuan di sini: (i) Rayuan No 02(f)-14-05-2024(W), rayuan oleh perayu ('Public Bank') terhadap keputusan Mahkamah Rayuan yang membenarkan rayuan responden-responden atas liabiliti; dan (ii) Rayuan No. 02(f)-15-05-2024(W), adalah rayuan oleh responden-responden terhadap keputusan Mahkamah Rayuan yang memberikan mereka ganti rugi nominal RM10,000 sahaja walaupun mereka telah membuktikan liabiliti terhadap Public Bank. Tuntutan responden-responden adalah untuk kerugian dan kerosakan yang timbul daripada pendedahan yang salah dan tidak dibenarkan maklumat perbankan sulit responden-responden ('maklumat sulit') yang melanggar kewajipan berkanun Public Bank yang melanggar Akta Bank dan Institusi-Institusi Kewangan 1989 ('BAFIA') yang melanggar Akta Perlindungan Data Peribadi 2010 ('PDPA') yang melanggar kewajipan kontrak antara bank dan pelanggan dan/atau kewajipan fidusiari kerahsiaan sebagai institusi kewangan atas kegagalan mereka dalam melindungi maklumat peribadi dan kewangan pelanggan-pelanggannya. Tuntutan responden-responden untuk ganti rugi am adalah berdasarkan dakwaan kehilangan keuntungan yang berpunca daripada kelakuan Public Bank, iaitu pendedahan dokumen sulit yang dikeluarkan. Semasa perbicaraan hadapan

Mahkamah Tinggi, responden-responden telah, melalui SP1 dan SP3, mengemukakan dan menjelaskan carta kewangan untuk menunjukkan analisis arah aliran bagaimana NFCorp dan kumpulan syarikatnya terjejas dari segi kewangan oleh pendedahan tersebut. Mahkamah Tinggi, walau bagaimanapun, menolak keterangan SP3 berdasarkan kelayakannya, kerana SP3 tidak mempunyai sebarang kelayakan dalam analisis kewangan. Mahkamah Tinggi membuat kesimpulan bahawa walaupun responden berjaya mewujudkan liabiliti, responden gagal mengemukakan apa-apa bukti untuk menunjukkan bahawa mereka telah mengalami kerosakan atau kerugian akibat daripada kenyataan yang dibuat. Mahkamah Rayuan mengakas dapatan liabiliti yang dibuat oleh Mahkamah Tinggi dan mendapati Public Bank bertanggungan. Mahkamah Rayuan, walau bagaimanapun, tidak menilai semula dapatan Mahkamah Tinggi berkenaan ganti rugi. Responden memohon relief-relief berikut: (i) ganti rugi am sebanyak RM60,000,000, dikira berdasarkan pendapatan bersih responden-responden pada tahun 2013; (ii) ganti rugi teladan sebanyak RM250,000,000, akibat pendedahan maklumat sulit yang telah mencemar reputasi responden-responden; dan (iii) ganti rugi teruk sebanyak RM250,000,000, atas kerugian yang dialami responden-responden kerana mereka telah kehilangan peluang untuk menjana pendapatan masa hadapan dalam perniagaan semua syarikat dan akibatnya tidak dapat meneruskan perniagaan mereka.

Diputuskan (membenarkan rayuan responden-responden; menolak rayuan perayu):

(1) Adalah prinsip undang-undang yang mantap bahawa apabila keterangan dikemukakan, tetapi tidak dicabar atau dicanggah oleh pihak lawan, mahkamah berhak – dan sememangnya wajib – bertindak atas keterangan yang tidak dicabar itu. Keterangan dokumen yang tidak dicabar atau disangkal kekal baik, boleh dipercayai dan harus dipercayai. Terdapat beberapa keterangan kewangan yang dikemukakan oleh responden-responden, seperti laporan kewangan yang komprehensif dan akaun yang diaudit, disokong oleh keterangan saksi pakarnya, PW3. Public Bank, walau bagaimanapun, tidak mengemukakan apa-apa keterangan untuk menyangkal dokumen ini – tidak melalui keterangan pakar, rekod bank atau bahan dokumen lain. Sebaliknya, satu-satunya serangan mereka adalah berkaitan kelayakan atau kredibiliti PW3. Oleh itu, sekiranya tiada apa-apa sanggahan oleh pakar atau bukti dokumen, laporan kewangan dan akaun yang telah diaudit kekal tidak dipertikaikan. Cabaran Public Bank terhadap kedudukan PW3 tidak boleh menggantikan pemeriksaan balas yang bermakna atau bukti bertentangan, dan tidak menjejaskan kebolehpercayaan dokumen kewangan asas itu sendiri.

(2) Mahkamah Rayuan telah terkhilaf dalam membuat kesimpulan bahawa responden-responden telah mengemukakan bukti yang tidak mencukupi untuk menyokong tuntutan mereka untuk ganti rugi. Sebaliknya, responden-responden telah mengemukakan laporan kewangan dan akaun yang telah diaudit melalui saksi pakar mereka, PW3, perunding kewangan responden-responden. Public Bank telah mencabar kelayakan PW3. PW3 merupakan pemegang ijazah dalam bidang kewangan serta Sarjana Pentadbiran Perniagaan (MBA) dan memiliki lebih 30 tahun pengalaman dalam bidang kewangan. PW3 layak untuk memberikan keterangan pakar berkenaan kesan kewangan yang dialami oleh responden-responden. Public Bank pula gagal mengemukakan mana-mana saksi pakar untuk mencabar atau menyangkal keterangan PW3, sekali gus mengakibatkan keterangan PW3 tidak bercanggah.

(3) Selepas meneliti laporan kewangan secara terperinci dan akaun audit yang dikemukakan sebagai bukti dan tidak dicabar oleh Public Bank, responden-responden sememangnya mengalami kerugian dan kerosakan. Oleh itu, mahkamah mengawardkan yang berikut: (i) ganti rugi saksama sebanyak RM30 juta; (ii) ganti rugi teladan sebanyak RM30 juta; dan (iii) ganti rugi teruk sebanyak RM30 juta. Terdapat merit dalam isu yang dibangkitkan oleh responden-responden.

Case(s) referred to:

Rookes v. Barnard [1964] AC 1129 ***(refd)***

Sony Electronics (M) Sdn Bhd v. Direct Interest Sdn Bhd [2007] 1 CLJ 611 CA ***(refd)***

Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1994] CLJU 284; [1994] 1 LNS 284 FC ***(refd)***

For the appellant - Chan Kok Keong & Tiang Min Min; M/s Shook Lin & Bok

For the respondents - Muhammad Shafee Abdullah, Sarah Abishegam, Noor Farhah Mustaffa, Tharrence Anthony & Suhail Shamsuddin; M/s Shafee & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Hasnah Mohammed Hashim CJ (Malaya):

[1] There were two appeals before us. Appeal No. 02(f)-14-05-2024(W) was an appeal by the appellant ("Public Bank") against the decision of the Court of Appeal allowing the respondents' appeal on liability whereas Appeal No. 02(f)-15-05-2024(W) was an appeal by the respondents against the Court of Appeal's decision awarding them only nominal damages of RM10,000 despite having proved liability against Public Bank. They had claimed RM60 million for general damages, RM250 million for aggravated damages and RM250 million for exemplary damages, totalling RM560 million.

[2] Having heard submissions on 26 February 2025, 16 April 2025 and 26 May 2025, we dismissed Public Bank's appeal on liability and adjourned the case to another date to hear arguments on damages. These are the grounds of our decision on damages.

[3] On 26 May 2025, after hearing arguments and submissions of counsels for both parties, we dismissed Public Bank's appeal and allowed the respondents' appeal.

[4] In its statement of claim the respondents sought the following reliefs:

(i) general damages of RM60,000,000;

(ii) exemplary damages of RM250,000,000; and

(iii) aggravated damages of RM250,000,000.

[5] The general damages suffered by the respondents were calculated based on the net income suffered by all the respondents as at year 2013. The tabulation of quantification of damages amounting to RM60 million are based on the audited accounts.

[6] The respondents further sought aggravated damages of RM250 million against Public Bank for the damages suffered by the respondents. As a result of the disclosure by Public Bank, respondents contended that they have lost the opportunity to generate future income in the business of all the companies and a result could not continue with their business.

[7] The respondents also sought exemplary damages as a result of the disclosure of confidential information which resulted in the smearing of the appellant's reputation. On the facts before us, it is evident that the respondents suffered loss which affected the reputation of the fifth respondent's family which warrants an award of aggravated damages.

[8] We have carefully considered the respondents' appeal on damages and the submissions by the parties and we are of the view that the Court of Appeal erred when it found that the respondents failed to prove damages, and awarded nominal damages of RM10,000 with interest.

The High Court

[9] Even though the High Court found that the respondents were not liable, Her Ladyship nevertheless addressed the issues on the assumption that the respondents, the defendants in the High Court, are liable. The High Court concluded that the respondents failed to prove the claim for general damages, aggravated and exemplary damages.

The Court Of Appeal

[10] The Court of Appeal was of the opinion that the High Court Judge's approach and the reasoning was not erroneous or flawed. However, the Court of Appeal ordered nominal damages of RM10,000 with interest thereon at

A 5% per annum from 22 May 2012 until the date of full payment or realisation as the respondents have succeeded on liability but failed in their claim for substantial or any damages.

[11] In making the order for nominal damages, the Court of Appeal found support in the case of *Sony Electronics (M) Sdn Bhd v. Direct Interest Sdn Bhd* B [2007] 1 CLJ 611; [2007] 2 MLJ 229 where it was held by the Court of Appeal that:

> [87] Nominal damages may be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. Although this is one of many situations in which nominal damages may be awarded, 'it C is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss' (see *McGregor on Damages*, Chapter 10).
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> [88] In the instant case, the issue is one of proof rather than absence of loss. It is an absence of evidence of the amount of loss.
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> D [89] As Lord Halsbury LC succinctly stated in *The Mediana* [1900] AC 113:
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> ... Nominal damages is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to E the verdict or judgment because your legal right has been infringed.
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> [90] In the instant case, we find that the respondent has clearly failed to prove this loss which was allegedly suffered from the appellant's breach of contract. In a situation where there is an infringement of a legal right such as this but where there is no basis for ascertainment of the amount F of loss suffered, a nominal damage may be awarded (see *Sykes v. Midland Bank Executor & Trustee Co Ltd* [1971] 1 QB 113).

Our Analysis And Decision

[12] The respondents' claims are for losses and damages arising out of the wrongful and unauthorised disclosure of the respondents' confidential G banking information (the "Confidential Information") in breach of Public Bank's statutory duty in contravention of Banking and Financial Institutions Act 1989 (BAFIA), in breach of Personal Data Protection Act (PDPA), in breach of contractual duty between bank and customers, and/or fiduciary duties of confidentiality as a financial institution for their failure in protecting H its clients' personal and financial information.

[13] The respondents' claim for general damages is based on the alleged loss of profitability resulting from the conduct of Public Bank, that is, the disclosure of confidential documents released. According to the respondents, before the press conference held on 7 March 2012, their projected income I for the period 2011 to 2023 indicated a consistent upward trend.

[14] The losses were derived from actual Retained Earnings (accumulated losses) recorded in audited accounts from December 2008 to 2012 of five companies, namely NFCorp, NMLC, RFC, Meatworks and Agroscience Industries. The actual losses according to the respondents under general damages was RM57,974,621 in 2014 when the trial commenced. The audited account of the five companies was not finalised yet at that point of time in 2014, hence the management accounts of 2013 was used and tendered as evidence by the respondents for the purpose of calculating the profit and losses of the companies to derive the general damages from 2008 to 2013. The general damages claimed by the respondents included the losses after the impact of disclosure which covered the financial period from 2012 and 2013.

[15] There was also the Implementation Agreement entered into between the first respondent and the Government, the first respondent was contractually obligated to slaughter 246,000 heads of cattle annually and to produce fresh beef and beef products over the initial 30-year periods of the agreement. The respondents contended that this obligation underpins a guaranteed income stream for the first respondent, which was adversely affected by Public Bank's actions.

[16] At the trial before the High Court Judge, the respondents, through SP1 and SP3, adduced and explained the financial charts to demonstrate the trend analysis of how NFCorp and its group of companies were financially impacted by the disclosure. Before the High Court Judge, the respondents presented the first projection to illustrate the comparison with the projection prepared in 2011, which showed actual incomes based on the group's audited accounts for 2011. Thereafter, from 2012 to 2020, the projected income was calculated based on contractual sales, as outlined in the implementation agreement. Whereas the second projection, according to the respondents, was prepared showing actual incomes from 2009 to 2013 based on the latest audited accounts and management accounts at the time the projection was prepared in 2014.

[17] The High Court Judge rejected the evidence of SP3 based on his qualifications, that is, he did not have any qualification in financial analysis and no experience in the beef industry. Her Ladyship concluded that even if the respondents succeeded in establishing liability, the respondents failed to adduce any evidence to show that they had suffered damages or losses as a result of the statement made.

[18] The High Court Judge further erred by considering the seizure of the respondents' funds by the Government under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), as this factor is irrelevant to the claim for damages in the suit before Her Ladyship.

[19] The Court of Appeal reversed the findings of liability made by the High Court Judge and found Public Bank liable. Unfortunately, the Court of Appeal, having decided based on the evidence and the facts before it that Public Bank is liable, did not assess and re-evaluate the High Court's findings on damages. In the grounds of judgment, the Court of Appeal said:

> [125] In our view, based on the evidence led during the trial, it cannot be said that the judge's conclusion upon the question of damages was plainly wrong. Having considered the matter carefully, and having due regard to the comprehensive written submissions and the extensive oral clarification before us, we find that there is no appealable error to warrant any appellate interference in this case *vis-à-vis* damages.
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> [126] For completeness, we should add that in this case, the bank clearly did not "gain" from the wrongful disclosure by Johari. If anything, the bank had sustained reputational damage as this episode of wrongful disclosure went completely against the bank's client charter which gave the customers the assurance that their banking information and details would be kept confidential at all times. At the same time, because of PW3's inadequate and unconvincing evidence on damages that were said to have been suffered by the plaintiffs as a result of Johari's wrongful disclosure, the claim for general damages was dismissed. But that is not the end of the matter. In cases of breach of confidence, the innocent party (plaintiffs here) may not be able to show any real loss as a result of the wrongful disclosure.
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> [127] In those circumstances, it may well be that the court ought to take a modified approach as discussed by the Singapore Court of Appeal in *I-Admin*'s case (*supra*) where the case was remitted to the High Court for assessment of damages on the basis of "equitable damages". However, in this case, the question of equitable damages was not ventilated in the High Court and neither was it brought up during submissions. But given the way the case was conducted in the High Court where both liability and quantum were dealt with at the trial without being bifurcated, we do not see how we could even consider remitting the case to the High Court for assessment of equitable damages as that would be akin to giving the plaintiffs a second bite of the proverbial cherry.
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> [128] In our view, the learned judge, having considered all the evidence, was fully entitled to reach her evaluative judgment as per the grounds of judgment *vis-a-vis* damages. Although the plaintiffs severely criticised the judge's approach and reasoning on the issue of damages, we are not persuaded that the judge's approach was erroneous, the reasoning flawed, or the conclusions wrong.
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> [129] We conclude by referring to the reminder by the Federal Court in *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng, Administrator Of The Estates Of Tan Ewe Kwang, Deceased & Ors* [2020] 10 CLJ 1; [2020] 12 MLJ 67; [2020] MLJU 1469; [2020] 8 AMR 227:

> As long as the trial judge's conclusion can be supported on a rational basis in view of the material evidence, the fact that the appellate court feels like it might have decided differently is irrelevant. In other words, a finding of fact that would not be repugnant to common sense ought not to be disturbed. The trial judge should be accorded a margin of appreciation when his treatment of the evidence is examined by the appellate courts.

[20] With the greatest of respect, the Court of Appeal erred in concluding that the respondents adduced insufficient evidence in support of their claim for damages. On the contrary, the respondents had submitted financial reports and audited accounts through their expert witness, PW3, Mr Zakaria bin Mohamad, who is the respondents' financial consultant. Public Bank challenged PW3's qualifications; however, PW3 holds a degree in Finance as well as a Master of Business Administration (MBA). He also possesses over 30 years of experience in the field of finance. In the circumstances, the respondents argued that PW3 was duly qualified to give expert evidence on the financial impact suffered by the respondents. Public Bank failed to produce any expert witness to challenge or rebut the evidence of PW3, thereby leaving the testimony of PW3 uncontradicted.

Equitable Damages

[21] Equitable remedies are often granted if compensatory damages would not be an adequate remedy, or in the alternative to damages. Monetary remedy awarded by courts in equity when a party in a position of trust breaches their duty, thus causing a loss or harm.

Exemplary Damages

[22] Exemplary damages, also known as punitive damages are damages awarded that perhaps go beyond what is necessary to compensate the injured party. The object of exemplary damages is to compensate. However, such damages are awarded only in exceptional circumstances. The leading authority is *Rookes v. Barnard* [1964] AC 1129, in which Lord Devlin outlined two specific categories where exemplary damages may be awarded:

(i) oppressive, arbitrary or unconstitutional actions by public servants; or

(ii) wrongful conduct calculated to profit a party. For example, where the defendant commits a wrongful act deliberately, knowing that it is unlawful and does so to gain by making a profit exceeding compensatory damage.

Lord Devlin explained in *Rookes*:

> The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category, – I say this with particular reference to the facts of this case, – to oppressive action by private corporations or individuals. Where one man is more powerful

A than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might perhaps be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way ; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the
B servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages. Cases in the second category are those in which the Defendant's conduct
C has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.

Aggravated Damages

[23] Aggravated damages on the hand is a form of compensatory damages
D awarded in civil cases where the defendant's conduct caused the claimant additional hurt or distress.

[24] In considering assessment of damages, the Federal Court in *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd* [1994] CLJU 284; [1994] 1 LNS 284 reminded itself that:

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> We need hardly add that in considering this appeal, and in particular, the grounds upon which an appellate court would be justified in interfering by reassessment of the damages, we have reminded ourselves of what Greer LJ had said in *Flint v. Lovell* [1935] 1 KB 354 at p 360. He said:
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> This court will be disinclined to reverse the finding of a trial judge as to
> F the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the
> G amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.
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> In other words, the two situations in which an appellate court would be justified in interfering by reassessment of the damages would be where the trial judge has acted on a wrong principle or has made an entirely
> H erroneous estimate of the damages.
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> The statement of the law in *Flint v. Lovell*, quoted above, was followed by the House of Lords in *Davies v. Powell Duffryn Associated Collieries (No 2)* [1942] AC 601 (per Lord Wright, at pp 616-617 and per Lord Porter at pp 623-624) and also by the Judicial Committee of the Privy Council in
> I *Nance v. British Columbia Electric Rly* [1951] AC 601 at p 613.

[25] To justify reversing the High Court Judge on the question of the amount of damages this court must be convinced that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, which in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled. In the appeal before us, the courts below failed to consider the evidence, both oral and documentary. Hence made an entirely erroneous award of the damages.

[26] The Court of Appeal erred in holding that the respondents failed to establish their claim for damages due to insufficient evidence. There was, in fact an abundance of financial evidence adduced by the respondents such as comprehensive financial reports and audited accounts, supported by testimony from its expert witness, PW3. Public Bank, however, did not adduce any evidence to rebut these documents – neither through expert testimony, bank records, nor other documentary materials. Instead, their only course of attack concerned PW3's qualifications or credibility.

[27] It is a well-established principle of law that where evidence is tendered but not challenged or contradicted by the opposing party, the court is entitled – and indeed obliged – to act on that unchallenged evidence. Documentary evidence which is neither challenged nor debunked remains good, credible and should be relied upon. Thus, in the absence of any expert rebuttal or documentary evidence, the financial reports and audited accounts remain uncontroverted. Public Bank's challenge on PW3's standing cannot substitute for meaningful cross-examination or contrary evidence, and does not undermine the reliability of the underlying financial documents themselves.

[28] We have thoroughly examined the detailed financial reports and audited accounts which was adduced as evidence and not challenged by Public Bank and are of the opinion that the respondents had suffered losses and damages. We therefore award the following:

(i) equitable damages of RM30 million;

(ii) exemplary damages of RM30 million;

(iii) aggravated damages of RM30 million; and

2% per annum interest from the date of this order until the full realisation.

Conclusion

[29] Based on the aforementioned reasons and in the light of the above settled principles, we found merits in the issues raised by the respondents. Having carefully considered the submissions of all parties and for all the reasons aforesaid, we allowed the appeal by the respondents in Appeal No. 02(f)-15-05-2024(W) and dismissed the appeal by Public Bank in Appeal No. 02(f)-14-05-2024(W).

A **[30]** We set aside the decision of the Court of Appeal on damages. The decision of the High Court on liability and damages is also set aside. We awarded costs of RM200,000 in Appeal No. 02(f)-14-05-2024(W) and RM100,000 in Appeal No. 02(f)-15-05-2024(W) to the respondents, subject to allocator.

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